

CHAPTER NO. 195

HOUSE BILL NO. 864

By Representative Kisber

Substituted for: Senate Bill No. 1484

By Senator Rochelle

AN ACT to provide for the levy of additional sales tax on interstate telecommunications services sold to businesses; to amend Tennessee Code Annotated, Section 67-4-2009, relative to provide for the pass-through to customers of certain savings through reduction in rates for telecommunications services; to provide a sales tax exemption for certain telecommunications equipment; to provide for effective dates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-221, is amended by deleting that section in its entirety and by substituting instead the following:
67-6-221.

(a) Notwithstanding any other provision of the law to the contrary, interstate telecommunication services sold to businesses shall be subject to a tax imposed at the rate of seven and one-half percent (7.5%).

(b) The revenue from a rate equal to one-half percent (0.5%) of tax shall be deposited in the general fund and earmarked for education purposes for kindergarten through grade twelve (k-12) in accordance with Section 67-6-103(c)(2). The revenue from a rate equal to one-half percent (0.5%) of tax shall be distributed to incorporated municipalities in the proportion each population bears to the aggregate population of the state and to unincorporated areas of counties in the proportion each population bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to Section 67-6-712. The revenue from a rate equal to four percent (4%) of tax shall be deposited in the Telecommunications Ad Valorem Tax Reduction Fund created by this act. All other revenue generated from the tax imposed by subsection (a) shall be deposited in the state general fund and allocated pursuant to Section 67-6-103(a).

SECTION 2.

(a) There is hereby created in the state treasury a special fund to be known as the Telecommunications Ad Valorem Tax Reduction Fund, which shall be administered by the comptroller of the treasury. The monies in the fund shall be used solely and exclusively to pay the expenses incurred by the comptroller of the treasury in administering the fund and implementing the provisions of Section 3 of this act, and to make the ad valorem tax equity payments authorized by Section 3 of this act. The monies in the fund shall be invested in the same manner as the monies in the state general fund. Interest earned on investment of monies in the fund shall be deposited in and credited to the fund.

(b) On or before June 30, 2003, and on or before June 30 of each year thereafter, any monies in the Telecommunications Ad Valorem Tax Reduction

Fund as of May 15 of such year, which are in excess of the amount necessary to make the payments pursuant to Section 3 of this act, including payments attributable to carryovers, shall be deposited into the state general fund and allocated pursuant to Section 67-6-103(a).

SECTION 3.

(a) Pursuant to the rules of this section, every person providing telecommunications services subject to tax under Title 67, Chapter 6 shall be entitled to an ad valorem tax equity payment in an amount equal to the sum of (i) twenty-seven and twenty-seven hundredths percent (27.27%) of the aggregate ad valorem taxes paid to political subdivisions of this state relating to property assessed with a lien date on or after January 1, 2002, with respect to such person's public utility property, as defined in Section 67-5-501(8)(B), which is real property; and (ii) forty-five and forty-five hundredths percent (45.45%) of the aggregate ad valorem taxes paid to political subdivisions of this state relating to property assessed with a lien date on or after January 1, 2002, with respect to such person's public utility property, as defined in Section 67-5-501(8)(B), which is personal property. The payment allowed by this section shall be based on the date that the respective ad valorem taxes are paid, regardless of the date on which such taxes were originally due.

(b) On or before May 15, 2003, and on or before May 15 of each year thereafter, every telephone company entitled to a payment under this section, including payments attributable to carryovers, shall notify the comptroller of the treasury in writing of the amount of such payment and the basis for claiming such payment.

(c) On or before June 30, 2003, and on or before June 30 of each year thereafter, the comptroller of the treasury shall make all payments allowed by this section, including payments attributable to carryovers. If the comptroller of the treasury fails to make such payment within the time prescribed, the telephone company entitled to such payment may file suit against the comptroller of the treasury in chancery court in the appropriate county in this state.

(d) The amount of the payments made pursuant to this section in any year shall be limited to the amount contained in the Telecommunications Ad Valorem Tax Reduction Fund on May 15 of such year, after deduction for the reasonable administrative expenses incurred by the comptroller of the treasury. To the extent that the amount contained in the Telecommunications Ad Valorem Tax Reduction Fund, after deduction for the comptroller of the treasury's reasonable administrative expenses, does not equal or exceed the total amount of payments allowed by this section, including payments attributable to carryovers, such payments shall be proportionately reduced by the amount of the shortfall. Any such reductions shall be carried forward to the succeeding year or years, but in no case more than fifteen (15) years after the year in which the telephone company first became entitled to the payment. The comptroller of the treasury shall determine the amount of any reductions pursuant to this subsection.

(e) In the event that the ad valorem tax liability of a company is reduced for any year with respect to which such company has received an ad valorem tax equity payment pursuant to this section, thereby entitling such company to a refund of ad valorem taxes, such company shall repay the portion of such ad valorem tax equity payment attributable to such reduction within sixty (60) days

of receiving notice of such reduction. All such repayments shall be credited to the Ad Valorem Tax Reduction Fund.

SECTION 4. To the extent that a person engaged in the business of providing telecommunications services subject to tax under Title 67, Chapter 6 experiences a net tax savings solely as a result of receiving a payment under Section 3 of this act, such net tax savings shall inure to the benefit of the business customers of such person through an adjustment in the price of telecommunications services provided by such person, including business and interconnection services. The first such price adjustment shall be effective as of January 1, 2002, based on each company's estimated share of the payments projected by the department of revenue to be made under Section 3 of this act on or before June 30, 2003. Subsequent price adjustments shall be effective as of October 1, 2003, and as of October 1 of each year thereafter, based on the actual payment received by each company under Section 3 of this act with respect to the immediately preceding June 30 payment date and taking into account the cumulative amount of price adjustments previously implemented. Each incumbent local exchange telephone company providing services pursuant to a price regulation plan in accordance with Section 65-5-209 shall adjust its aggregate revenue cap computed under such plan by the amount of the net tax savings experienced solely as a result of receiving a payment under Section 3 of this act. For purposes of this section, "net tax savings" shall take into account and be reduced by any reduction in a company's settlements due to the company complying with Title 47, Parts 36 and 69 of the Code of Federal Regulations.

SECTION 5. The provisions of this act are deemed not to be severable. Therefore, if Section 3 of this act is repealed, declared invalid or otherwise becomes inoperable, all other provisions of this act shall by operation of law immediately become inapplicable, inoperable and of no effect.

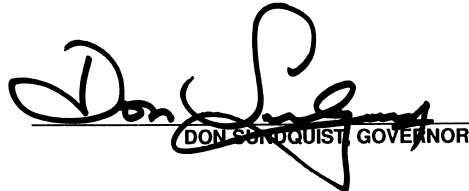
SECTION 6. The provisions of Section 1 of this act shall be effective with respect to bills submitted by telecommunications service providers to their customers that are dated on or after January 1, 2002, the public welfare requiring it. Sections 2, 3, and 4 of this act shall be effective on January 1, 2002, the public welfare requiring it. The remaining provisions of this act shall take effect and be in force and effect upon becoming a law, the public welfare requiring it.

PASSED: May 2, 2001


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 10th day of May 2001


DON SUNDQUIST, GOVERNOR